

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

AMENDED IN ASSEMBLY MARCH 25, 2015

AMENDED IN ASSEMBLY MARCH 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 357

Introduced by Assembly Members Chiu and Weber
(Principal coauthor: Senator Leyva)
(Coauthors: Assembly Members Bonta, Chu, Gonzalez,
Roger Hernández, Rendon, and Thurmond)

February 17, 2015

An act to add Sections 518 and 519 to the Labor Code, and to amend Section 11320.31 of the Welfare and Institutions Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 357, as amended, Chiu. Employment: work hours: Fair Scheduling Act of 2015.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including wage claims. Existing federal law provides for the allocation of federal funds through the federal Temporary Assistance for Needy

Families (TANF) block grant program to eligible states, with California's version of this program known as the California Work Opportunity and Responsibility to Kids (CalWORKs) program. Under the CalWORKs program, each county provides cash assistance and other benefits to qualified low-income families and individuals, and is prohibited from applying sanctions upon a recipient of CalWORKs for a failure or refusal to comply with program requirements for reasons related to employment, an offer of employment, an activity, or other training for employment for specified reasons, including, but not limited to, that the employment, offer of employment, or work activity does not provide workers' compensation insurance. Existing law establishes a statewide program to enable eligible low-income persons to receive food stamps under the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, and requires counties to implement the program.

This bill would make legislative findings and declarations relating to work hour scheduling for employees of food and general retail establishments. The bill would require a food and general retail establishment, as defined, to provide its employees with at least 2 weeks' notice of their schedules. The bill would require a food and general retail establishment to pay those employees additional pay, as specified, for each previously scheduled shift that the food and general retail establishment moves to another date or time or cancels and each previously unscheduled shift that the food and general retail establishment requires an employee to work, and would also require a food and general retail establishment to pay those employees a specified amount for each on-call shift for which the employee is required to be available but is not called in to work. The bill would specify that these provisions do not apply in certain circumstances, including, but not limited to, when operations cannot begin or continue due to causes not within the food and general retail establishment's control. The bill would prohibit a food and general retail establishment from discharging or discriminating against an employee because he or she is a person who receives, or is a parent, guardian, or grandparent who has custody of one or more children who receive, benefits under the CalWORKs program or a person who receives benefits under CalFresh. The bill would also require an employer to allow an employee to, upon request, be absent from work without pay for up to 8 hours twice a year to attend any required appointments at the county human services agency, provided that the employee gives reasonable advance notice to the

employer of his or her intention to take time off, unless advance notice is not feasible. The bill would prohibit an employer from taking any action against an employee when an unscheduled absence occurs due to a required appointment at the county human services agency if that employee provides specified documentation from the county human services agency. The bill would require the Labor Commissioner to promulgate all regulations and rules of practice and procedure necessary to carry out these provisions. The bill would also prohibit sanctions from being applied upon a recipient of CalWORKs for failure or refusal to comply with CalWORKs program requirements if the employment or offer of employment fails to comply with these provisions.

Existing law continuously appropriates moneys from the General Fund to defray a portion of county costs under the CalWORKs program.

This bill would instead provide that the continuous appropriation would not be made for purposes of implementing the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Fair Scheduling Act of 2015.
- 3 SEC. 2. The Legislature finds and declares the following:
- 4 (a) More than one-half of food and general retail store employees
- 5 nationally receive their work schedules one week or less in
- 6 advance.
- 7 (b) According to a recent survey of employees at chain stores
- 8 and large stores, only 40 percent of those surveyed have consistent
- 9 minimum hours per week and the vast majority of employees find
- 10 out from a supervisor if they are needed for the on-call shift a mere
- 11 two hours before the shift starts. Retail industry research in New
- 12 York City found that more than one-half of family caregivers in
- 13 the retail industry are required to be available for on-call shifts,
- 14 forcing them to arrange for child or elder care at the last minute.
- 15 (c) Women are also more likely than men to work part time and
- 16 experience unpredictability in their work schedules; one study
- 17 found that women were 64 percent of the frontline part-time
- 18 workforce among retail workers.
- 19 (d) Unpredictable scheduling practices and last-minute work
- 20 schedule changes cause workers who are already struggling with

low wages to live in a constant state of insecurity about when they will work or how much they will earn on any given day. These practices also make it hard for employees to plan their finances and to plan for and obtain child care. These practices also prevent part-time employees from pursuing educational opportunities or holding a second or third job that those workers may need to make ends meet.

(e) According to census data, since 2006, the number of “involuntary part time employees” in California nearly tripled to 1,100,000 employees. According to the federal Bureau of Labor Statistics, less than one-half of the retail workforce nationwide works full time, and the number of those working fewer than 20 hours per week has grown by 14 percent in the past decade.

(f) According to a survey conducted in 2014 of workers who sell food in California, the largest producer of food in the United States, they are twice as likely as the general populace to be unable to afford sufficient quantities of the food they sell or the healthy kinds of food their families need, despite the financial health of the food retail industry. According to this same survey, workers who were Black or Latino were far more likely to be sent home early with no pay, to have a shift canceled on the same day it is scheduled, to not be offered a lunch break, or not be paid for all hours worked.

(g) For these reasons, to ensure family and financial stability for a vast segment of California’s workforce, those employed by food and general retail establishments should be afforded some predictability and dignity in how they are scheduled to work.

SEC. 3. Section 518 is added to the Labor Code, to read:

518. (a) (1) For purposes of this section, a “food and general retail establishment” means a retail sales establishment that has a physical location with in-person sales, including, but not limited to, a food retail store, a grocery store, a general merchandise store, a department store, and a health and personal care store, that meets all of the following:

(A) Has 500 or more employees in this state.

(B) Has 10 or more other such retail sales establishments located in the United States of America.

(C) Maintains two or more of the following:

(i) A standardized array of merchandise.

(ii) A standardized facade.

1 (iii) A standardized decor and color scheme.

2 (iv) Uniform apparel.

3 (v) Standardized signage.

4 (vi) A trademark or a service mark.

5 (2) A “food and general retail establishment” does not include
6 *a retail establishment where the provision of customer service is*
7 *the primary activity of the establishment and any sale of*
8 *merchandise is secondary or incidental to that service*, an online
9 retailer that does not have a physical location with in-person sales
10 in this ~~state~~ *state*, or a franchise, as defined in Section 31005 of
11 the Corporations Code, that does not meet subparagraphs (A) to
12 (C), inclusive, of paragraph (1).

13 (3) This section does not apply to an employee who is exempt
14 from the payment of an overtime rate of compensation for
15 executive, administrative, and professional employees pursuant to
16 wage orders by the Industrial Welfare Commission described in
17 Section 515.

18 (b) A food and general retail establishment shall provide its
19 employees with at least two weeks’ notice of their work schedules.

20 (c) A food and general retail establishment shall provide an
21 employee with the following compensation, per shift, for each
22 previously scheduled shift that the food and general retail
23 establishment moves to another date or time or cancels, and each
24 previously unscheduled shift that the food and general retail
25 establishment requires an employee to work:

26 (1) One hour of pay at the employee’s regular hourly rate if less
27 than seven days’ notice but at least 24 hours’ notice is given to the
28 employee.

29 (2) Two hours of pay at the employee’s regular hourly rate for
30 each shift of four hours or less if less than 24 hours’ notice is given
31 to the employee.

32 (3) Four hours of pay at the employee’s regular hourly rate for
33 each shift of more than four hours if less than 24 hours’ notice is
34 given to the employee.

35 (4) When an employee is required to come into work by a food
36 and general retail establishment, the compensation required by
37 this subdivision shall be in addition to the employee’s regular pay
38 for working that shift. This paragraph does not apply to subdivision
39 (f).

(d) Subdivision (c) shall not apply to shifts for which the employee is compensated with reporting time pay as required by any wage order of the Industrial Welfare Commission.

(e) Subdivision (c) shall not apply to changes in the scheduling of rest periods, recovery periods, or meal periods.

(f) A food and general retail establishment shall provide an employee with the following compensation for each on-call shift for which the employee is required to be available but is not called in to work:

(1) Two hours of pay at the employee's regular hourly rate for each on-call shift of four hours or less.

(2) Four hours of pay at the employee's regular hourly rate for each on-call shift of more than four hours.

(g) Subdivision (f) shall not apply to on-call time that is required to be compensated as hours worked and for which the employee is in fact compensated under existing law.

(h) The requirements in subdivisions (c) and (f) shall not ~~apply~~ *apply, and an employer shall not be deemed to have violated subdivision (b),* under any of the following circumstances:

(1) Operations cannot begin or continue due to threats to employees or property, or when civil authorities recommend that work not begin or continue.

(2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system.

(3) Operations cannot begin or continue due to an act of God or other cause not within the food and general retail establishment's control, including, but not limited to, an earthquake or a state of emergency declared by a local government or the Governor.

(4) Another employee previously scheduled to work that shift is unable to work due to illness, vacation, or employer-provided paid or unpaid time off required by existing law when the food and general retail establishment did not receive at least seven days' notice of the other employee's absence.

(5) Another employee previously scheduled to work that shift has not reported to work on time, is fired, sent home, or told to stay at home as a disciplinary action.

(6) The food and general retail establishment requires the employee to work overtime, such as mandatory overtime.

1 (7) The employee trades shifts with another employee or
2 requests from the food and general retail establishment a change
3 in his or her shift, hours, or work schedule.

4 (i) The Labor Commissioner shall promulgate all regulations
5 and rules of practice and procedures necessary to carry out the
6 provisions of this section.

7 (j) A violation of this section shall not be a misdemeanor under
8 Section 553.

9 (k) This section shall not be construed to prohibit a food and
10 general retail establishment from providing greater advance notice
11 of an employee's work schedule or changes in an employee's work
12 schedule than what is required by this section.

13 SEC. 4. Section 519 is added to the Labor Code, to read:

14 519. (a) (1) A food and general retail establishment, as defined
15 in Section 518, shall not discharge or discriminate against an
16 employee because he or she is any of the following:

17 (A) A person who receives CalWORKs cash aid.

18 (B) A parent, guardian, or grandparent who has custody of one
19 or more children who receive CalWORKs cash aid.

20 (C) A person who receives CalFresh food assistance.

21 (2) A food and general retail establishment, as defined in Section
22 518, shall allow an employee to be absent from work without pay
23 for up to eight hours twice a year, upon request, to attend any
24 required appointments at the county human services agency.

25 (b) As a condition of taking time off for a purpose set forth in
26 subdivision (a), the employee shall give the employer reasonable
27 advance notice of the employee's intention to take time off, unless
28 the advance notice is not feasible.

29 (c) An employer shall not take any action against an employee
30 when an unscheduled absence occurs due to a required appointment
31 at the county human services agency if that employee, within a
32 reasonable time, provides documentation to the employer from
33 the county human services agency documenting the required
34 appointment.

35 (d) The Labor Commissioner shall promulgate all regulations
36 and rules of practice and procedures necessary to carry out the
37 provisions of this section.

38 (e) A violation of this section shall not be a misdemeanor under
39 Section 553.

1 SEC. 5. Section 11320.31 of the Welfare and Institutions Code
2 is amended to read:

3 11320.31. Sanctions shall not be applied for a failure or refusal
4 to comply with program requirements for reasons related to
5 employment, an offer of employment, an activity, or other training
6 for employment, including, but not limited to, the following
7 reasons:

8 (a) The employment, offer of employment, activity, or other
9 training for employment discriminates on any basis listed in
10 subdivision (a) of Section 12940 of the Government Code, as those
11 bases are defined in Sections 12926 and 12926.1 of the
12 Government Code, except as otherwise provided in Section 12940
13 of the Government Code.

14 (b) The employment or offer of employment exceeds the daily
15 or weekly hours of work customary to the occupation.

16 (c) The employment, offer of employment, activity, or other
17 training for employment requires travel to and from the place of
18 employment, activity, or other training and one's home that exceeds
19 a total of two hours in round-trip time, exclusive of the time
20 necessary to transport family members to a school or place
21 providing care, or, when walking is the only available means of
22 transportation, the round-trip is more than two miles, exclusive of
23 the mileage necessary to accompany family members to a school
24 or a place providing care. An individual who fails or refuses to
25 comply with the program requirements based on this subdivision
26 shall be required to participate in community service activities
27 pursuant to Section 11322.9.

28 (d) The employment, offer of employment, activity, or other
29 training for employment involves conditions that are in violation
30 of applicable health and safety standards.

31 (e) The employment, offer of employment, or work activity
32 does not provide for workers' compensation insurance.

33 (f) Accepting the employment or work activity would cause an
34 interruption in an approved education or job training program in
35 progress that would otherwise lead to employment and sufficient
36 income to be self-supporting, excluding work experience or
37 community service employment as described in subdivisions (d)
38 and (j) of Section 11322.6 and Section 11322.9 or other community
39 work experience assignments, except that a recipient may be
40 required to engage in welfare-to-work activities to the extent

1 necessary to meet the hours of participation required by Section
2 11322.8.

3 (g) Accepting the employment, offer of employment, or work
4 activity would cause the individual to violate the terms of his or
5 her union membership.

6 (h) The employment or offer of employment fails to comply
7 with the Fair Scheduling Act of 2015 (Sections 518 and 519 of the
8 Labor Code).

9 SEC. 6. No appropriation pursuant to Section 15200 of the
10 Welfare and Institutions Code shall be made for purposes of
11 implementing this act.

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